Filed 2/7/03 Mahrouyan v. Shirani CA6

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

NITA MAHROUYAN,

Plaintiff and Appellant,

v.

RAMIN SHIRANI,

Defendant and Respondent.

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H023938

(Santa Clara County Superior Court Nos. CV 784660, 196 FL 060582)

Six months after their divorce, plaintiff filed a civil action for damages against defendant, her former husband, alleging that he had fraudulently misrepresented the value of a community asset at the time they agreed to a stipulated judgment of dissolution disposing of their community property. A year and a half later, defendant moved for summary judgment. The superior court concluded that plaintiff had failed to state a cause of action and granted plaintiff leave to amend. The superior court directed that all further proceedings be heard in family court. Plaintiff promptly filed a petition for relief from the dissolution judgment in family court, but the family court granted defendant's motion to quash on the ground that plaintiff's petition was untimely because more than a year had elapsed since the entry of the dissolution judgment. Plaintiff appeals.

She claims that (1) the superior court erroneously ruled that she could not bring an independent civil action for damages against defendant and (2) the family court erred in finding that her petition was untimely. We find merit in her second contention and reverse the judgment.

I. Background

Plaintiff and defendant married in 1994 and separated in 1996. Defendant promptly filed an action for dissolution of their marriage. He also filed a civil action against plaintiff that produced an August 1998 judgment in his favor for over $200,000. In September 1998, defendant filed a disclosure in the dissolution action acknowledging that he owned stock in the privately-held company that employed him (hereafter the stock) and acknowledging that the community had some interest in the stock.[1] At that time, defendant proposed that he hold plaintiff's community property interest in the stock in trust for her.

A final stipulated judgment of dissolution disposing of the couple's community property was entered on March 17, 1999. The parties agreed in the stipulated judgment that defendant would execute a partial satisfaction of the

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[1] The parties dispute whether this asset was stock or an option to purchase stock. It is undisputed that defendant actually purchased the stock during the marriage. However, all of the stock was subject to the company's right to repurchase it at the exercise price if defendant did not remain employed by the company. If defendant remained employed by the company for one year, the company would release its right to repurchase 24 percent of the stock. Thereafter, the company would release its repurchase right to 2 percent of the stock for each additional month defendant remained employed at the company. If defendant remained employed by the company for 50 months, the company would completely release its repurchase right. Plaintiff and defendant separated five weeks after defendant became employed by the company and purchased the stock. At that time, the company had not released its repurchase right as to any of the stock. It is immaterial to the issues raised on appeal whether this asset should be properly characterized as stock or as merely an option.

August 1998 judgment in the amount of $32,616. They also agreed that they would each retain the property in their possession and "that shall constitute an equal division of the entire marital estate including all assets and debts." The judgment required the parties to exchange final disclosure declarations by April 17, 1999. Defendant executed a final disclosure declaration on March 22, 1999. In his disclosure, he stated that the stock had an "unkn" current gross fair market value. Plaintiff did not appeal from the dissolution judgment.

On September 17, 1999, plaintiff filed a civil action against defendant alleging causes of action for "breach of statutory duty as a spouse," fraud and conversion. Plaintiff acknowledged in her complaint that a March 17, 1999 final judgment of dissolution had "dispos[ed] of all community property assets and liabilities." She alleged that, during the dissolution proceedings, defendant had fraudulently asserted that the stock had an "unknown" value. Plaintiff asserted that defendant had been aware when he made this representation that the stock "would have substantial and definite value" as soon as an unconsummated but announced "deal" was finalized for a portion of the privately-held company to be acquired by a larger publicly-held company. She claimed that defendant should have informed her of the potential acquisition because he knew that it would impact the value of the stock. She sought general, special and punitive damages, interest and attorney's fees and costs.

In January 2000, defendant filed an answer in which he asserted as an affirmative defense that plaintiff had failed to state facts constituting a cause of action and that her action was barred by the statute of limitations. In March 2001, defendant filed a motion for summary judgment in which he asserted, among other things, that plaintiff's complaint was "an improper collateral attack on a lawful stipulated judgment." Defendant claimed that plaintiff could only raise her claims by properly attacking the dissolution judgment either (1) in family court by motion

or (2) in equity by alleging extrinsic fraud. He argued that she had not alleged extrinsic fraud, and she had failed to make a motion for relief from the judgment in family court within the statutory one-year period for doing so.

In April 2001, the court decided to treat defendant's summary judgment motion as a motion for judgment on the pleadings, granted it on the ground that plaintiff had failed to state a cause of action and allowed plaintiff 20 days to amend her pleading and refile it in family court. In May 2001, plaintiff filed a petition in family court seeking to set aside the dissolution judgment and redistribute the community property interest in the stock. The civil case was transferred to the family court and consolidated with the petition.

Defendant filed a motion to quash the petition in August 2001. He asserted that plaintiff's petition was an improper collateral attack on the dissolution judgment that was "time-barred" under Family Code section 2122. Plaintiff, on the other hand, insisted that her petition was timely because she had filed her civil action just six months after the entry of the dissolution judgment. The family court granted defendant's motion to quash and entered judgment for defendant in both the civil and family court cases. Plaintiff filed a timely notice of appeal from the judgment.

II. Discussion

A. Judgment on the Pleadings

Plaintiff contends that the superior court erred in ruling that she had failed to state a cause of action in her civil action. Relying on *Dale v. Dale* (1998) 66 Cal.App.4th 1172, she insists that she may maintain a tort cause of action against defendant as an alternative to seeking relief from the dissolution judgment.

In *Dale*, a final judgment distributing all of the community assets was entered in 1988. (*Dale* at p. 1175.) Joanne Dale discovered in 1993 that Thomas

Dale had concealed community assets, and she filed a civil action for damages against him alleging, among other things, breach of fiduciary duty, fraud and conversion. (*Dale* at p. 1176.) The superior court dismissed the case on the ground that it lacked jurisdiction because the family court had already adjudicated the disposition of the community assets. (*Dale* at p. 1177.) The Fourth District Court of Appeal, emphasizing that the alleged fraud was "extrinsic" rather than "intrinsic," held that Joanne was entitled to pursue her civil action. (*Dale* at p. 1185.) The court expressly excluded any consideration of the impact of Family Code sections 2120 through 2129 because those statutes applied only to dissolution judgments entered on or after January 1, 1993.[2]

Family Code sections 2120 through 2129 took effect in 1993. These statutes provide a means of obtaining relief from a dissolution judgment after relief from the judgment is no longer available under Code of Civil Procedure (CCP) section 473 because the judgment has been in place for more than six months. (Fam. Code, §§ 2120, subd. (d), 2121, subd. (a).) Family Code section 2122 provides "[t]he grounds and time limits for a motion to set aside a [dissolution] judgment," and it states that such requests for relief "are governed by this section and shall be one of the following." The statute goes on to state that an "action or motion" for relief from a dissolution judgment[3] on the ground of fraud

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[2] "For judgments entered on or after January 1, 1993, Family Code section 2120 et seq. provides a comprehensive statutory scheme for setting aside such judgments on grounds of actual fraud, perjury, duress, mental incapacity, or mistake. Because the judgment at issue here was entered in 1988, we have no occasion to address the effect of Family Code section 2120 et seq. on the viability of a tort action for concealment of community assets." (*Dale* at p. 1179, fn. 5.)

[3] The statutory scheme makes clear that the only "action or motion" that it authorizes is an "action or motion to set aside a judgment." (Fam. Code, § 2125.)

or perjury must be brought within one year of discovery.[4] (Fam. Code, § 2122, subds. (a), (b).)

The impact of Family Code sections 2120 through 2129 was discussed in *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131. The Rubensteins' dissolution judgment became final in 1994, after the effective date of Family Code sections 2120 through 2129. (*Rubenstein* at p. 1137.) In 1997, Arteena Rubenstein filed an action seeking relief from the judgment dissolving her marriage to Alan Rubenstein on grounds of extrinsic fraud and perjury and seeking tort damages from Alan for, among other things, fraud, conversion and breach of fiduciary duty. (*Rubenstein* at pp. 1138-1139.) Alan obtained summary judgment. (*Rubenstein* at p. 1141.) On appeal, Arteena asserted that she was not precluded from maintaining her tort causes of action. The First District Court of Appeal disagreed.

The First District criticized *Dale*'s conclusion that a civil action could be brought on these facts even before the enactment of Family Code sections 2120 through 2129. (*Rubenstein* at pp. 1146-1147.) The First District concluded that the sole remedy for fraud in obtaining a dissolution judgment was a request for relief from the judgment.[5] (*Rubenstein* at pp. 1146-1147.) It also held that Family Code sections 2120 through 2129 precluded a civil action by providing the exclusive remedy for allegations of fraud in obtaining a dissolution judgment once

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[4] In 2001, Family Code section 2122 was amended to permit an action or motion to be brought based on "failure to comply with disclosure requirements" within one year of discovery. (Fam. Code, § 2122, subd. (f).)

[5] Because Alan had failed to show that Arteena was not entitled to prevail on her request for relief from the judgment, the First District reversed the judgment and remanded for further proceedings solely on that request. (*Rubenstein* at pp. 1148-1152.)

the six-month CCP section 473 time limit had expired. (*Rubenstein* at pp. 1147-1148.)

In *Kuehn v. Kuehn* (2000) 85 Cal.App.4th 824, the Second District was faced with the same fact situation as faced the *Dale* court. The dissolution judgment in *Kuehn* had been entered in 1990, so Family Code sections 2120 to 2129 were inapplicable. (*Kuehn* at pp. 828, 830-831.) Laraine Kuehn alleged that Garrett Kuehn had concealed community assets. She sought equitable relief from the dissolution judgment on the ground of extrinsic fraud, and she also alleged tort causes of action. (*Kuehn* at p. 828.) The Second District declined to follow *Dale* and agreed with the reasoning of *Rubenstein* with respect to the unavailability of a tort remedy.[6] (*Kuehn* at p. 834.)

We too disagree with *Dale*'s conclusion that tort damages are an available remedy for fraud in obtaining a dissolution judgment. Our respect for the finality of judgments compels such a conclusion. Traditionally, there have been limited means of attacking a final judgment, and dissolution judgments have not been treated differently. Within six months of any judgment, a party could obtain relief under CCP section 473 if the judgment was a result of the party's "mistake, inadvertence, surprise or excusable neglect." (*In re Marriage of Varner* (1997) 55 Cal.App.4th 128, 136-138.) After the expiration of the six-month time limit, a party could obtain relief from a judgment only for "extrinsic fraud or mistake." (*Varner* at pp. 139-140.) The enactment of Family Code sections 2120 through 2129 expanded the grounds for attacking a dissolution judgment after the expiration of the six-month CCP section 473 limit where the attack was on certain grounds and was brought within specified time periods. Neither the traditional nor

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[6] Laraine was permitted to pursue her equitable action for relief from the judgment on the ground of extrinsic fraud. (*Kuehn* at pp. 831-833.)

expanded means of attack on a final dissolution judgment allows a civil action for damages. We agree with the First District and the Second District that a party cannot maintain a civil action based on fraud in obtaining a dissolution judgment. Consequently, we agree with the superior court that plaintiff failed to state a cause of action. The court did not err in granting judgment on the pleadings in the civil action.

B. Family Court Action

Plaintiff did not avail herself of either of the traditional means of attack on a final judgment. She did not file a timely CCP section 473 motion, and her complaint did not seek relief from the judgment on the ground of extrinsic fraud. Indeed, her complaint did not even allege "extrinsic" fraud. Although a party's "concealment of the *existence* of a community property asset" constitutes extrinsic fraud, "[a] party's *representation of the value* of an asset, favorable to himself, does not constitute extrinsic fraud." (*In re Marriage of Melton* (1994) 28 Cal.App.4th 931, 937, emphasis added.) Plaintiff did not allege that defendant concealed the existence of a community property interest in the stock but only that he misrepresented the value of the stock. Since she did not allege extrinsic fraud or bring a timely CCP section 473 motion, plaintiff's only remaining avenue was an "action or motion" for relief from the judgment under Family Code sections 2120 through 2129.

An action or motion for relief from a dissolution judgment under Family Code section 2120 through 2129 must be filed within one year after discovery of the fraud or perjury. (Fam. Code, § 2122, subds. (a), (b).) Plaintiff indisputably discovered the fraud or perjury no later than September 1999. Yet she did not file any "action or motion" *for relief from the judgment* until May 2001. Because more than one year had elapsed since her discovery of the fraud or perjury, her

request for relief from the judgment under Family Code sections 2120 through 2129 was facially untimely.

Plaintiff argues that her civil action was in fact an "action" for relief from the judgment within the meaning of Family Code sections 2120 through 2129. Nowhere in her complaint can there be found a request for relief from the judgment. The problem with her complaint was not, as she argues, that her "action" was filed in the civil department rather than the family law department, but that her action did not seek relief from the judgment. Thus, her complaint was not in fact an action for relief from the judgment.

Plaintiff also contends that her May 2001 family court petition for relief from the judgment was timely because that pleading "relates back" to the September 1999 filing of her civil complaint. We find merit in this contention.

Defendant concedes that the family court's action in quashing plaintiff's petition was akin to the sustaining of a demurrer without leave to amend, yet he asserts that we should review the family court's decision under an abuse of discretion standard. Not so. Appellate review of the sustaining of a demurrer is de novo. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. We also consider matters which may be judicially noticed." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The sole question is the legal issue of whether the pleading "states facts sufficient to constitute a cause of action." (*Blank* at p. 318.)

The only ground upon which defendant sought to quash plaintiff's family court petition was his claim that her action was untimely. Plaintiff asserts that her family court petition was an amended pleading that related back to the time of the filing of her civil action. "[A]n amended complaint relates back to the filing of the original complaint, and thus avoids the bar of the statute of limitations, so long as

recovery is sought in both pleadings on the same general set of facts." (*Smeltzley v. Nicholson Mfg. Co.* (1977) 18 Cal.3d 932, 934; *Austin v. Massachusetts Bonding & Insurance Co.* (1961) 56 Cal.2d 596, 600-601.) The amended pleading relates back even if it changes the legal theory and asserts a completely new cause of action. (*Smeltzley* at p. 936.)

Here, the superior court clearly anticipated that plaintiff's family court petition would be an amended version of her civil complaint because it granted her "leave to amend" and transferred the action to the family court. And plaintiff's petition did indeed make the same allegations as her complaint. The only differences were that plaintiff's petition sought relief from the judgment and was filed in family court. These differences were nothing more than a change in the legal theory and the assertion of a new cause of action based on the same facts. Such a pleading relates back to the pleading it supplants.

Defendant asserts that plaintiff's petition does not relate back to the filing of her complaint. He cites no case authority in support of his assertion but instead points out that plaintiff "cites no case law holding that the doctrine of relation back applies *under these unique circumstances*." (Emphasis added.) It is not necessary for there to be a published appellate decision on each set of "unique circumstances" before a court can discern that a legal doctrine is applicable. While we have not found any identical case, the many cases outlining the circumstances under which a pleading relates back to the filing of its predecessor pleading support our conclusion that plaintiff's family court petition relates back to the filing of her civil complaint. It follows that her family court petition was timely filed, and the court erred in granting defendant's motion to quash.[7]

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[7] It is therefore unnecessary for us to consider whether equitable tolling is applicable here.

III. Disposition

The judgment is reversed. The family court is directed to vacate its order granting defendant's motion to quash and to enter a new order denying that motion. Plaintiff shall recover her appellate costs.

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Mihara, J.

WE CONCUR:

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Elia, Acting P.J.

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Bamattre-Manoukian, J.